IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.203 OF 2007
IN
REGULAR DARKHAST NO.385 OF 2003

Abhilasha A. Saraswat ...Plaintiff
Vs.
Aniruddha Ramdev Saraswat ...Defendant

Mr.Uday N. Kapadia and Kiran U. Kapadia for Plaintiff
Mr.Ajit S. Karwande with Mr. Ashok Avadh for Defendant/Applicant

CORAM: SMT. ROSHAN DALVI, J.
DATED: 28TH FEBRUARY, 2007

P.C.

1. The Chamber Summons has been taken out by the Defendant/Husband/Judgment Debtor in the matrimonial proceedings taken out by the Decree Holder/wife as the Plaintiff in the said Proceeding.

2. An order for payment of maintenance of Rs.4000/- p.m for the wife as well as the son of the Judgment Debtor came to be passed. That order was not complied and a large amount came to be due and payable by the Judgment

Debtor to the Decree Holder.

3. After making part payments from time to time a sum of Rs.1,38,000/- remained to be payable and unpaid for a long time. Consequently an order for committing the Judgment Debtor to Civil Prison came to be passed on an application taken out under Order 21 Rules 37 and 38 of the CPC. The Judgment Debtor came to be produced before this Court for execution of that order. The Judgment Debtor was heard. He could not show how he would make payment of the maintenance amount which he was legally, as also morally, bound to pay for the maintenance of his wife and son. The Judgment Debtor also did not offer any security or property for discharging his liability to pay such huge maintenance amount. He has remained in custody since 19th January, 2007. He has taken out this application for :

(a) releasing him from prison unconditionally

(b) releasing him from prison upon the terms and conditions deem fit by this Court.

4. He has filed his affidavit in support of the Chamber Summons. His brother has also filed affidavit in support of the Chamber Summons. Both affidavits show certain properties being one land at Nashik and one flat of MHADA

in Mumbai. The Judgment Debtor contends that the Decree Holder/Plaintiff/wife sold the property at Nashik and is in possession of the MHADA flat. The Decree Holder/wife has contended that the property at Nashik belonged to her and hence was sold by her. The MHADA flat in Mumbai also belongs to her and hence she resides therein with her son.

5. There is another flat at Padmavati Co-operative Housing Society at Andheri, Mumbai of the Judgment Debtor where he lives. The flat is mortgaged to a Bank. The Judgment Debtor has failed and neglected to pay the Bank installments and redeem the mortgage. Rs.14 Lakhs with interest are payable to the Bank. The Judgment Debtor has not offered any arrangement by which he would sell that property to discharge the liability of the Bank as well as his wife and son.

6. The Advocate for the Plaintiff/Decree Holder argued that if the Judgment Debtor had good intention and did not mean to merely fail to pay the debt, he could move his residence to a smaller flat and discharge both the liabilities. No such offer is made by the Judgment Debtor.

7. The Judgment Debtor is the Doctor in Sanskrit, he is stated to be carrying on business in the name and style of

"Target Communications". He has not shown his income therefrom. It is the case of the Judgment Debtor and his brother that his business has been closed for the last 4 years. How and why it came to be closed is not stated or explained.

8. The Plaintiff's Advocate has shown that paragraph 9 of the affidavit in reply of the Judgment Debtor to the application for committing him to Civil prison made before the Civil Judge (S.D.) Nashik showing that he made payments of Rs.40,000/- , Rs.25000/- , Rs. 10,000/- , Rs.4,551/- and Rs.4000/- by Demand Drafts to the Decree Holder/Plaintiff. It further alleges a cash payment of Rs.30,000/- made to her which is denied by her. It mentions about further Rs.10000/- and Rs.8000/- offered to be paid by Demand Draft. Consequently it is seen that the Judgment Debtor did have amounts to pay to his wife and son in April, 2006 though not all the entire amount due and payable. It is not explained how he made such payments if his business was closed for the last 4 years.

9. After hearing the plea of both the parties and seeing that no case is made out to show cause against the notice under Order 21 Rule 37 and 38 of the CPC, the learned Civil Judge (S.D.), Nashik passed order for issue of a Warrant

unless substantial deposit of the amount was made within 3 days. Thereafter on 3rd April, 2006 the Respondent/Judgment Debtor paid Rs.18000/- leaving a balance of Rs.1,38,000/- .

10. The Plaintiff/Decree Holder/wife's Advocate therefore, rightly argued that the effort of the Respondent was made malafide only to defeat and delay his being committed to Civil prison.

11. It is seen that the Judgment Debtor has the means to pay but has failed and neglected to pay the entire amount of the maintenance due and payable to his wife/Decree Holder. It is also seen that he has failed and neglected to pay the maintenance for his son. Further his claim, without any particulars, that his business closed down 4 years ago, is seen to be contradicted by his own small installments to the Judgment Debtor.

12. He has remained in prison since 19th January, 2007. His term of imprisonment has not expired. No case is shown for releasing him from prison.

13. The reliance upon the judgment in the case of K. Karunakar Shetty Vs. Syndicate Bank, AIR 1990 Karnataka

1 is entirely misplaced. That judgment is in respect of the Judgment Debtor who has no means to pay and no malafide intention to defeat the Decree such is not the case with the present Judgment Debtor.

14. The Chamber Summons is dismissed.

(SMT.ROSHAN DALVI, J.)